

DRAFT DATED 07 August 2024

**ADMINISTRATIVE AND
LEGAL AFFAIRS
DEPARTMENT**

Regulation of the State Secretary for Infrastructure and Water Management,
of, No IENW/BSK-, amending the Regulation on other pyrotechnic articles in
connection with the implementation of the Benelux Decision in connection with
the prevention of improper use of pyrotechnic articles

The State Secretary for Infrastructure and Water Management,

Having regard to Article 9.2.2.1 and Article 21.6(4) of the Environmental
Management Act [Wet milieubeheer];

HEREBY DECREES THE FOLLOWING:

Article I

The Regulation on other pyrotechnic articles [Regeling overige pyrotechnische
artikelen] is amended as follows:

A

In Article 1, the following definitions are inserted in alphabetical order:

designed to produce a sound: designed to produce sound by igniting the
pyrotechnic charge contained in the pyrotechnic article in question;

sound level: sound level as determined in accordance with section 6.2.3.6 of NEN-
EN-16263-3 (2015);

designed to produce light or smoke: designed to produce light or smoke by
igniting the pyrotechnic charge contained in the pyrotechnic article in question;

Directive 2014/90/EU: Directive 2014/90/EU of the European Parliament and of the
Council of 23 July 2014 on marine equipment and repealing Council Directive
96/98/EC (OJ L 257);

B

An article is inserted after Article 4, reading as follows:

Article 4a

1. Except for persons with specialist knowledge of the corresponding pyrotechnic
articles of category P2 and persons holding a permit or an equivalent document, it
is prohibited to possess and use pyrotechnic articles of category P1 which:

- a. contain flash powder or are designed to produce a sound and contain
more than 1 gram of NEM;
- b. contain flash powder or are designed to produce a sound whose sound
level at a distance of 8 metres exceeds 120 dB (A, impulse); or

- c. are designed to produce light or smoke, unless:
 - 1°. they bear a wheel mark as referred to in Directive 2014/90/EU; or
 - 2°. they are designed to generate a rescue signal in an emergency situation and are recognisable as such, bear a legible indication of their intended use and are waterproof, and are owned, used or sold for the purpose of generating a rescue signal in an emergency situation.

2. It is prohibited to sell or otherwise make available the articles referred to in paragraph 1 to anyone other than persons with specialist knowledge or persons holding a permit or an equivalent document.

Article II

This Regulation shall enter into force on 1 January 2025.

This regulation and the explanatory notes shall be published in the Government Gazette.

THE STATE SECRETARY FOR INFRASTRUCTURE AND WATER MANAGEMENT –
PUBLIC TRANSPORT AND ENVIRONMENT,

C.A. Jansen

EXPLANATORY NOTES

General

1. Introduction

The purpose of this Ministerial Regulation is to implement the Benelux Decision on combating the improper use of pyrotechnic articles intended for the general public [Benelux-beschikking betreffende het tegengaan van de oneigenlijke aanwending van pyrotechnische artikelen bedoeld voor het grote publiek].¹

The provisions of the Pyrotechnics Directive² which relate to the so-called other pyrotechnic articles are directly implemented in the Regulation on other pyrotechnic articles (hereinafter: Ropa). In order to implement this Benelux Decision on improper use, the Ropa has therefore been amended by this Ministerial Regulation.

2. Outline of the proposal

Under the Pyrotechnics Directive, there are several categories of pyrotechnic articles, namely fireworks (F1 to F4), theatrical pyrotechnic articles (T1 and T2) and other pyrotechnic articles (P1 and P2). Category P1 is for pyrotechnic articles, other than fireworks and theatrical pyrotechnic articles, which present a low hazard. The application of P1 articles does not require specialist knowledge. However, it has been found in Benelux that a significant number of pyrotechnic articles which in fact do not belong to this category but, for example, in categories F3 and F4 because of their appearance and production of loud bangs, are nevertheless improperly placed in this category by manufacturers or importers. As a result, these articles become available to persons without specialised knowledge and are used for entertainment. The sale of P1 articles is not currently prohibited, but their use for entertainment purposes is. Currently, P1 articles are used by private individuals for entertainment purposes. This can lead to risks, especially if articles that should actually be classified as F3 or F4 fireworks are improperly placed in this P1 category.

In order to prevent this, the Decision on combating the improper use of pyrotechnic articles intended for the general public (hereinafter: Benelux Decision)³ was signed within the Benelux context. This Benelux Decision has been implemented in the Ropa by the present Regulation. This means that the possession, use or sale of certain P1 articles is prohibited, except for or to persons with specialist knowledge or persons holding a permit or an equivalent document. These are categories of articles that are designed to produce a lot of sound, light or smoke. There are at present no examples of permits or equivalent documents in practice in the Netherlands. Because there are certain P1 articles that have a

¹ Decision of the Benelux Committee of Ministers on combating the improper use of pyrotechnic articles intended for the general public – M (2022) 7 (Benelux Official Journal 2022, No 2).

² Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles (OJ L 178).

³ Decision of the Benelux Committee of Ministers on combating the improper use of pyrotechnic articles intended for the general public, M (2022) 7.

legal use, but in view of Article 4a would be covered by the prohibition, an exception shall be made for certain cases by means of an exemption pursuant to Article 9.2.2.7 of the Environmental Management Act.

Finally, the Benelux Decision regulates that the possession, use or sale of pyrotechnic articles in categories F3 and T1 is prohibited, except for persons with specialist knowledge. As a result, these articles shall be prohibited from being made available to the general public in all three Benelux countries. This section does not require further implementation in Dutch legislation and regulations, since these articles are already prohibited in the Netherlands for anyone other than persons with specialist knowledge.

3. Relationship to higher law

The legal basis for the Benelux Decision is Article 6(2)(a) of the Treaty establishing the Benelux Union and Article 1(b) of the Protocol of 29 April 1969 on the abolition of checks and formalities at the internal borders of the Benelux and on the elimination of obstacles to free movement. On the basis of these provisions, the Committee of Ministers may make decisions with a view to coordinating the laws of the three Benelux countries in order to remove certain obstacles.

This amendment may introduce technical requirements. The amendment must therefore be notified⁴ to the European Commission under the Notification Directive. Accordingly, a draft of this Decree was submitted to the European Commission on [PM date] (notification number 2024/xxxx/NL). [PM results notification].

4. Relationship to national regulations

The rules concerning other pyrotechnic articles are included in the Ropa. The Regulation merely transposed the Pyrotechnics Directive insofar as it relates to pyrotechnic articles other than fireworks or theatrical pyrotechnic articles. Given that the basis for the amendment of the Ropa is contained in Article 21.6(6) of the Environmental Management Act, a draft of this Regulation was submitted to the Senate and the House of Representatives in the context of the preliminary scrutiny procedure prescribed in that Article.

5. Consequences (excluding financial consequences)

Impact on regulatory burden

As a result of the implementation of the Benelux Decision, the purchase and possession of certain P1 articles requires someone to be a person with specialist knowledge of the corresponding category P2 pyrotechnic articles or to hold a permit or equivalent document. This means that sellers must check whether someone is authorised at the time of sale, and buyers must be able to prove this. This check is expected to take a maximum of 5 minutes. The regulatory burden is therefore zero.

Following the implementation of the Benelux Decision, it may be desirable in some cases to make it possible to apply for an exemption. This is expected to take

⁴ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on information society services.

about 2 hours. Because the group of individuals or companies that can make use of this is small, the expected total regulatory burden is limited.

6. Implementation and enforcement

Regulations on pyrotechnic articles are enforced under both administrative and criminal law. The Human Environment and Transport Inspectorate [Inspectie Leefomgeving en Transport] (hereinafter: ILT) monitors the provisions relating to the safety and quality of the articles placed on the market by companies. The ILT is also the regulator for the transport of hazardous substances. Administratively, an order subject to penalty or an order subject to administrative coercion may be imposed on the basis of the Environmental Management Act. Provisions in the Ropa are criminalised in the Economic Offences Act [Wet op de economische delicten] via Article 9.2.2.1 of the Environmental Management Act and are enforced by the police and the Public Prosecutor's Office (OM).

7. Financial impact

The Regulation has no impact on the national budget.

8. Opinion and consultation

Online consultation

From 12 October to 9 November 2023, a draft Regulation was open for online public consultation. The draft Regulation submitted at that time also concerned the implementation of the Benelux Decision on the pyro-pass. It was chosen to split up this Regulation, because the implementation of the Decisions has different timeframes.

A total of 134 responses were submitted, of which 102 are public. Most of the responses concerned the implementation of the Benelux Decision in the Ropa. These are addressed below.

The responses indicated that the measures taken around P1 articles are unnecessary and cause too many rules and patronising behaviour from the Government. According to the responses, it should not be made more difficult to have the articles available.

Paragraph 2 of the explanatory notes describes why it was considered necessary to adapt the Ropa in order to implement a Benelux Decision. Indeed, it was found that certain articles are improperly placed in the P1 category. As a result, these articles become available to persons without specialised knowledge and are used for entertainment.

There were concerns about attaching a pyro-pass to P1 articles. It can be stated that, under Article 4.1 of the Fireworks Decree [Vuurwerkbesluit], it is mandatory for economic operators to check, on the basis of the pyro-pass, whether a buyer of professional fireworks, theatrical pyrotechnic articles and category P2 pyrotechnic articles is a person with specialist knowledge. This is not the case with P1 articles.

A number of responses to the online consultation expressed fear that a tradition would be lost and the entertainment and atmosphere that come with it, such as at football matches.

The use and misuse of articles that are not intended for entertainment purposes is not permitted and can lead to unsafe situations.

The responses also indicated that the products being regulated (such as smoke bombs and flares) do not cause dangerous situations. This may indicate that these

articles are not intended for entertainment purposes, and are therefore not used for the correct purpose. This entails risks and can lead to dangerous situations. This is all the more the case if articles that should actually be placed under, for example, the F3 or F4 category are placed under the P1 category.

The responses highlighted the usefulness of P1 articles and their legitimate use, for example, in the case of emergency signalling devices. It was requested that the measures should not apply to these products.

Certain emergency signalling devices are, under the conditions set out in Article 4a(c) of the Regulation, exempted from the prohibition set out in that Article.

The responses pointed to certain articles that fall under the prohibition set out in Article 3a because they are designed to produce light or smoke, such as certain components of alarm systems, while those articles are only used legally. In response, it is stated that Article 9.2.2.7 of the Environmental Management Act allows the Minister to grant exemption in special cases on an application to that effect, if the interests of protecting human health and the environment do not preclude this. In exceptional cases, this possibility thus offers a solution to the problem outlined here. This is within the scope of Article 4a. Indeed, this Article regulates a prohibition, except for persons with specialist knowledge of the corresponding pyrotechnic articles in category P2 and persons holding a permit or an equivalent document. The situations that may qualify for the above-mentioned exemption shall be considered on a case-by-case basis. The general part of the explanatory notes has been amended accordingly.

The responses to the online consultation indicated that while regulation of heavy pyrotechnic articles is important for safety, there must be opportunities for properly trained and certified persons to handle these articles responsibly. It is stated that the Regulation provides that certain P1 articles are prohibited except in the case of a person with specialist knowledge, in the case of a person holding a permit or an equivalent document.

The responses indicated that better monitoring is needed to penalise misuse. The Minister is of the opinion that the issues cannot be solved solely by means of monitoring and enforcement. Adaptation of the Ropa is necessary to prevent certain P1 articles, which should actually be seen as F3 or F4, from falling into the hands of private individuals for entertainment purposes.

The part in the Regulation on emergency signalling devices (rescue signal 4a.1.c) is too restrictive, according to one of the responses.

One problem addressed by this prohibition is that emergency signalling devices such as flares and smoke bombs are improperly used, for example at football matches. The demand for flares and smoke bombs has created a legal supply of flares and smoke bombs that meet the criteria for emergency signalling devices, but are not used as such. This is known throughout the chain and is demonstrated by, among other things, the abundant variety in the range of flares and smoke bombs, the volume of trade and the explicit disclaimers on the sites of providers of these products. Enforcement on use is not effective, now that the use takes place on a large scale and is difficult to trace back to the user. In view of this, it is necessary, effective and proportionate to limit supply to those emergency signalling devices that are not suitable for this improper use due to their properties. While this does create a risk of illegal sales, it can then be better addressed by criminal law.

The responses indicated that there is a fear that the measures will increase illegal trade by moving sales to the illegal market. It also follows from a number of

responses that, in particular, truly illegal fireworks need to be tackled. The responses indicated that misuse is never good, but that everyone must now pay for the actions of individuals.

In response, it is indicated that the Government is committed to tackling the illegal trade in, and the illegal use of, professional fireworks. The Government does this not only at national level, but also, for example, at EU level.

One of the responses stated that time and effort can be better put into countering the misclassification of pyrotechnic articles.

At an international level, the Netherlands is committed to ensuring the correct classification and categorisation of pyrotechnic articles. At EU level, for example, the Netherlands does so within the framework of the established European conformity procedures.

There are fears that the measures taken in this Regulation are a step towards a total ban on fireworks.

This indicates that this Regulation does not make any changes to the permitted consumer fireworks, as designated in the Regulation on the designation of consumer fireworks [Regeling aanwijzing consumentenvuurwerk – Rac]

HUF

The draft Regulation was submitted to the Human Environment and Transport Inspectorate (ILT) and the National Public Prosecutor's Office for Financial, Economic and Environmental Offences (FP) to carry out a test on enforceability, feasibility and fraud resistance. The draft Regulation submitted to the ILT and the FP also concerned the implementation of the Benelux Decision on the pyro-pass. These explanatory notes shall deal only with the comments relating to the amendment of the Ropa. The ILT did not comment on this amendment. The FP indicated that they had read the Regulation with interest, but did not see any reason to make any comments or observations.

ATR

The draft Regulation was submitted to the Advisory Board on Regulatory Burden [Adviescollege toetsing regeldruk] (hereinafter: ATR). ATR advises against adopting the Regulation. As this would constitute a violation of international agreements, this has not been chosen. However, the recommendations of ATR are responded to below. The draft Regulation submitted to ATR also concerned the implementation of the Benelux Decision on the pyro-pass. These explanatory notes shall deal only with the comments relating to the amendment of the Ropa.

ATR recommends explaining the extent and cause of the incorrect classification of pyrotechnic articles and fireworks and what social damage is caused by this. ATR also recommends substantiating the extent to which the prohibition on the sale, possession and use of certain P1 articles (except with a permit or knowledge) contributes to preventing the incorrect classification of pyrotechnic articles. ATR further recommends improving the product specifications for pyrotechnic articles in order to prevent incorrect classification (categorisation) of these articles.

In its opinion, ATR uses the term 'classification'. In order to avoid confusion with transport classification, these explanatory notes shall refer to 'categorisation'. In the European Pyrotechnics Directive, a distinction is made between different categories of pyrotechnic articles. Category P1 is for pyrotechnic articles other than fireworks. The application of P1 articles does not require specialist knowledge at this time. It has been found in Benelux that pyrotechnic articles which in fact do not belong to category P1 – but, for example, in categories F3 and F4 because of their appearance and production of loud bangs – are nevertheless improperly placed in this category by manufacturers or importers. The Minister agrees with ATR that improper categorisation is preferably addressed first. However, the way

pyrotechnic articles are categorised is regulated at EU level and cannot be changed by national regulation. It was decided to regulate at Benelux level so that these articles cannot improperly fall into the hands of private individuals because they are placed in the P1 category. This prevents these articles from falling into the hands of persons who do not have the right papers.

ATR recommends clarifying whether the proposal aims to combat the (improper) use of P1 articles for entertainment purposes, and if so, supplementing the explanatory notes with an analysis of the nature, extent and cause of this problem and the extent to which the measure solves it.

Following this recommendation, the explanatory notes have been supplemented. As the exact extent of the issues is not known, this recommendation has not been taken on board. ATR also recommends paying attention to the risk of circumvention of the measure by buying and selling P1 articles via countries outside Benelux (including Germany) and the extent to which this limits the effectiveness of the measure. The Minister agrees with ATR that introduction throughout the EU promotes effectiveness. The issues surrounding the misuse of fireworks, including P1 articles, and improper classification are raised by the Netherlands within the EU context.

ATR indicates that the use of P1 articles for entertainment purposes is already currently prohibited, and that it is unclear to what extent the improper use of P1 articles for entertainment purposes is currently monitored and enforced. ATR recommends addressing improper use of P1 articles through risk-based monitoring and enforcement, and only taking additional measures if monitoring and enforcement is insufficient to solve the problem. The Minister is of the opinion, as also indicated in the online consultation section, that the issues described cannot be solved solely by means of monitoring and enforcement. Adaptation of the Ropa is necessary to prevent certain P1 articles, which should actually be seen as F3 or F4, from falling into the hands of private individuals for entertainment purposes.

ATR recommends clarifying what the results of the consultation of companies about the Regulation are and explaining the follow-up to concerns about workability.

In the context of the drafting of the Benelux Decision, an inventory was made of which articles should not be covered by the prohibition. Partly on the basis of this, certain articles are exempted, for example emergency signalling devices as listed in Article 4a(1)(c).

Finally, ATR notes in the opinion that the regulatory burden analysis is unclear about the expected burden effects. For example, according to ATR, it is not clear how often the checking of permit and knowledge requirements shall come up and what the knowledge costs are for the proposal. In addition, the explanatory notes do not make it clear whether and if so how many buyers or sellers of P1 articles shall (have to) apply for a permit as a result of this measure, or whether they shall have to gain knowledge through, for example, additional training. ATR therefore recommends clarifying the analysis of (regulatory) costs for companies.

In response, it is indicated that it is not clear how often the aforementioned check is carried out; therefore, no additional description can be given in the explanatory notes. As indicated, following the public online consultation, it was found that it should be possible to apply for an exemption for certain articles. The regulatory burden section in these explanatory notes has been amended accordingly.

Preliminary scrutiny

Pursuant to Article 21.6(4) of the Environmental Management Act, a draft Ministerial Regulation adopted on the basis of this Article must be sent to both chambers of the States General at least 4 weeks before the Regulation is adopted. The draft Regulation was sent to both chambers on [PM date].

[PM results preliminary scrutiny]

9. Evaluation

The legislation shall be reviewed after 3 years. This is also important to be able to determine whether the system works well within Benelux, and to provide input for possible introduction at European level.

10. Entry into force

The regulation will enter into force on 1 January 2025. This is in line with the fixed change moments for regulations and the fixed introduction period.

EXPLANATORY NOTES BY ARTICLE

Article I, Part A

This Article amends certain provisions in the Ropa in order to implement the Benelux Decision on improper use. First of all, a number of definitions from Annex I to the Benelux Decision are included.

Article I, Part B

This Article defines the scope of the prohibition on the use of P1 articles. In particular, these are pyrotechnic articles which should not actually be available to the general public in Benelux countries because they essentially belong to categories F3 or F4, but are improperly placed in category P1 (and moreover often look like fireworks for entertainment purposes), so that they can still be sold to the general public. An exception should apply for use on water, because there these products are used to generate a rescue signal in an emergency situation. No special permit is required for this in the Netherlands. An exception is therefore made for this use, provided that the products are recognisable as such, bear a legible indication of their intended use and are waterproof. It is also required that they are owned, used or sold for the purpose of generating a rescue signal in an emergency situation. Paragraph 2 provides that the articles referred to in paragraph 1 shall not be sold or otherwise made available to anyone other than persons with specialist knowledge or persons holding a permit or an equivalent document. There is currently no such permit, but this possibility has been included in the event that it proves necessary in the future.

THE STATE SECRETARY FOR INFRASTRUCTURE AND WATER MANAGEMENT –
PUBLIC TRANSPORT AND ENVIRONMENT,

C.A. Jansen